IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 572 of 1979

Hon'ble MR.JUSTICE Y.B.BHATT
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?

2.   To be referred to the Reporter or not?

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder?

5.   Whether it is to be circulated to the Civil Judge?

The Regional Director, ESIC
Versus
Indian Oil Corporation Limited

Appearance:
    Mr. S.R. Shah, advocate for Petitioner
    MR M.R. Bhatt for Mr. R.P. Bhatt, advocate for Respondent

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CORAM : Y.B. BHATT J.
Date of decision: 28/02/96

ORAL JUDGEMENT

1. This appeal is filed by the ESI Corporation
challenging the judgement and order in ESI Application
No.34/74 decided by the Employees Insurance Court, Ahmedabad,
who declared and held that the employees engaged by the
present respondent in construction work of its units during
the period in question are not covered under the Act and that
the present respondent would not, therefore, be liable to pay
the employer's special contribution in respect of those
employees who are actually engaged in the construction work of

the said units.   The present respondent was held to be
entitled to claim refund of the amount paid or deposited by it
as the contribution in respect of such employees during the
relevant period.

2. The short point required to be decided here is whether
those employees engaged by an employer in construction work of
its unit(s) are covered or not covered under the definition of
the term "employee" under the Act and whether such employer is
not liable to pay the special contribution with regard to such
persons, and whether such employer is entitled to a refund of
the amount so paid or deposited in respect of such persons.

3. This question is now squarely covered by a decision of
the Supreme Court in the case of Regional Director, ESI
Corporation, Madras Vs. South India Flour Mills (P) Ltd. (AIR
1986 SC 1686). This issue has been specifically discussed in
paragraphs 10, 15 and 16 of the said decision.

4. The sum and substance of the said decision is that
even casual employees come within the purview of the said Act,
that the workers who have been employed on the construction
work of additional buildings for expansion of the factory are
employees within the meaning of section 2(9) of the said Act,
and that therefore the employer is required to make the
necessary payment or deposit as the employer's contribution in
respect of such persons.   This ratio is based upon the
observations to the effect that the work of construction of
additional buildings required for the expansion of a factory
must be held to be ancillary, incidental, or having some
relevance to or link with the object of the factory. It is
not correct to say that such work must always have some direct
connection with the manufacturing process that is carried on
in the factory.   The expression "work of the factory" should
also be understood in the sense of any work necessary for the
expansion of the factory or establishment or for augmenting or
increasing the work of the factory or establishment. Such
work is incidental or preliminary to or connected with the
work of the factory or establishment.

5. In view of this decision of the Supreme Court, the ESI
Court was obviously wrong in holding that the employees
engaged by the employer in construction work of its unit
during the period in question were not covered under the
definition of the term "employee" under the Act, and that
therefore the employer is not liable to pay the employer's
special contribution with regard to such persons, and that the
employer is entitled to claim refund of the amount paid or
deposited by it as contribution in respect of such persons.

6. In the result the impugned judgement and award are

quashed and set aside.   This appeal is, therefore, allowed
with costs. Interim relief vacated. Decree accordingly.

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